

BRIEF ENFORCEMENT HEARING MEMORANDUM

1. Respondent: Gary Long, Burien City Manager Case No. 02-269

2. Activity: Use of public facilities in opposition to Initiative 747 through publication and distribution of a fact sheet that did not make an objective and fair presentation of facts relevant to Initiative 747 (I-747).

3. Alleged violation:
 Alleged Violation of RCW 42.17.130

Staff alleges that Gary Long, Burien City Manager, violated RCW 42.17.130 by authorizing the distribution of a fact sheet that opposed I-747 by failing to make an objective and fair presentation of facts relevant to I-747.

4. Specifics:

Background

- a. I-747 concerns limiting property tax increases. This measure would establish new "limit factors" for taxing districts in setting their property tax levies each year. For each local government-taxing district, the limit factor would be a 1% increase over the highest of the district's three previous annual property tax levies. Taxing districts could levy higher than the limit factor with voter approval. The measure was found to have sufficient valid signatures and appeared on the November 6, 2001 General Election ballot, for which it failed in King County, but passed statewide.

- b. In accordance with WAC 390-05-271, RCW 42.17.130 does not prevent a public office or agency from making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency. Normal and regular conduct, as that term is used in the proviso to RCW 42.17.130, means conduct that is lawful, (i.e., specifically authorized), and usual, (i.e., not effected or authorized in or by some extraordinary means or manner).

- c. According to Sandra G. Guilfoil, Assistant Director of Property Tax Division for the Washington State Department of Revenue, although I-747 establishes new "limit factors" for taxing districts in setting their annual property tax levies, a jurisdiction may still be able to increase property taxes by more than one percent due to "banked capacity."

Under Referendum 47, a taxing district, like the City of Burien, could increase its property-tax collection by up to 6 percent if its governing board approved doing so by a two-thirds vote. If districts did not increase their property tax levies by 6 percent, they could bank the extra money they did not collect. I-747 neither repeals nor amends RCW 84.55.092, the statute allowing taxing districts to bank levy capacity, and I-747 does not affect any taxing district's previously banked levy capacity.

Activities of Gary Long

- d. On October 25, 2001, eleven days prior to the General Election, the City of Burien published and distributed a fact sheet entitled "Initiative 747 and Impacts to Local Public Service." (**Exhibit 2**) The fact sheet was authorized by Gary Long, Burien City Manager, and was distributed to all postal customers of Burien for a cost of approximately \$2,000 for printing and bulk postage. (**Exhibit 2**)
- e. On January 14, 2002, Mr. Long provided a sworn statement via teleconference recorded at the office of the PDC. When asked who determined that a fact sheet would be published, Mr. Long stated: "**I authorized it.**" (**Exhibit 6**) In addition, Linda Gorton and Jan Hubbard of the City of Burien stated that Gary Long determined that the City of Burien would distribute a fact sheet and authorized its content. (**Exhibits 7 and 8**) Contributors to the fact sheet included Linda Gorton, Jan Hubbard, and Mike Mars, all city employees. Additional contributors included a city contract employee, Susan Wineke, and Julie Wallace of the King County Library District. Linda Gorton, Jan Hubbard and Susan Wineke stated that they worked a total of seven hours on creating the fact sheet.

Failure to make an objective and fair presentation of facts relevant to I-747

- f. In the fact sheet, under the header *Summary of the Ballot Measure*, the City of Burien described that the initiative "**limits the increase in the regular property to either 1% or the rate of inflation, which ever is less.**" (**Exhibit 2**) The fact sheet failed to clarify I-747's limit factor for local government-taxing districts, like the City of Burien, which would be a 1% increase over the highest of the district's three previous annual property tax levies. It instead detailed the limit factor for the state, which would be the lower of 1% or the rate of inflation, which is more limiting. In addition, the fact sheet described that "**taxing districts could levy higher than this initiative's limit only with voter approval. (Each special election in Burien costs approximately \$20,000);**" however, due to Burien's "banked capacity", which increases the amount a local taxing district may raise property tax, without seeking voter approval, conducting an election was not the only way the City of Burien could levy taxes higher than I-747's limit.
- g. Under the header *Impacts on the City of Burien*, the fact sheet stated "**if initiative 747 had been in effect since 1997, the City of Burien would have had to cut about**

\$685,000 from its \$11 million general fund budget in 2001.” A graph highlighted the five years of annual revenue loss, given that premise, and then detailed how the city might have reduced services by \$685,000 by **“laying off six police officers”, “eliminating entirely the City’s human services funding to child care resources, crisis food, shelter, medical/utility bill assistance” and “domestic violence shelter services.” (Exhibit 2)** However, the information under this header is conjecture given that local taxing districts, in any given year, can levy higher than the limit factor with voter approval and the fact that I-747 did not pass in 1997. The information appears to imply future revenue losses to city programs and services. Mr. Long described the cuts listed in the fact sheet **“as examples of the types of cuts that could be made”**, not as actual projected cuts that the city would make if I-747 passes. The fact sheet did not provide citizens with information on how the passage of I-747 would impact current city services. In addition, the fact sheet did not acknowledge that the City of Burien has an extensive amount of “banked capacity” and could levy taxes higher than I-747’s limit.

- h. Under the header *Impacts on Emergency Medical and Fire Services*, the fact sheet described that if I-747 had been in effect since 1997, Burien’s Fire District No. 2 would have received two million less in property tax revenue between 1997 and 2001. A graph highlighted lost property tax revenue and the fact sheet described that the fire district would have not **“replace(d) outdated and inefficient equipment”**, purchased **“advanced life saving equipment”**, purchased **“a rescue boat”**, **“hired three firemen”**, nor been able to provide training for **“personnel in updated basic life support skills” (Exhibit 2)** However, the information under this header is conjecture given that fire districts, in any given year, can levy higher than the limit factor with voter approval, and it is not known whether additional tax revenue would have been sought or received. In addition, I-747 did not pass in 1997. The information provided in this section appears to imply future revenue losses to emergency, medical, and fire services, however the fact sheet did not provide citizens with information on how the passage of I-747 would impact current emergency medical and fire services.
- i. Under the header *Impacts on the Library*, the City of Burien republished information from the King County Library System’s fact sheet, stating **“revenue losses under I-747 would total \$2.7 million in 2002 and \$20.4 million in 2008 for library services; Reductions would occur in all areas of services and resources – books, technology, open hours and building maintenance.” (Exhibit 2)** However, the information under this header is conjecture given that library districts, in any given year, can levy higher than the limit factor with voter approval, and it is not known whether additional tax revenue would have been sought or received. In addition, the fact sheet information provided to City of Burien residents was previously published and provided by King County Library District in their fact sheet on I-747.

- j. In sworn testimony, Mr. Long, and Ms. Gorton, Director of Finance, stated that they provided the retroactive information concerning the impact if I-747 had passed in 1997 because they believed projected impacts were speculative or conjecture. **(Exhibits 6 and 8)** Ms. Gorton recommended the retroactive approach because **“projecting was too speculative in light of the fact that if the 1% limit in property tax occurred, we would not be subject to that law...”** Ms. Gorton explained that **“the City of Burien has an extensive amount of banked capacity...if you didn’t increase your property tax at 6% every year, but you have the ability to do that, you could bank the part you didn’t use and use it at some future time...And we have a lot of banked capacity.”** Ms. Gorton stated, **“there is no need for voter approval for the City of Burien because we have so much banked capacity. So I knew that no voter approval would be required. And that’s true for the foreseeable future...As I recall, our property tax could rise at 6% a year for I believe eight years and we still wouldn’t have to go out to the voters.”** Asked why this information was not included in the fact sheet, Ms. Gorton stated, **“Why would it be? I was giving them the facts, how it would have affect(ed) us.”** Ms. Gorton stated that if the City of Burien did not have banked capacity, she **“would have not gone back five years and used historic data. Or, if I had gone back five years and used the historic data, I would have stated that we would need voter approval in every single year...”** Therefore, the fact sheet failed to provide an objective and fair presentation of facts relevant to I-747 and its impact on the City of Burien. The City of Burien knew it would not be subject to the I-747 limit factors for taxing districts in setting their property tax levies each year due to banked capacity. Yet, the fact sheet described cuts to personnel, programs and services that the city could have targeted for elimination, due to a fictional retrospective impact to city services.
 - k. Susan Wineke, City of Burien Consultant, stated that the fact sheet included information concerning the fire district and library services so that citizens could read about impacts to all city services, even though fire and library services are not provided by the City of Burien. **(Exhibit 9)**
- 5. Complaint from: Joseph Coomer.
 - 6. Staff comments: In 1999, the City of Burien produced and distributed a newsletter to all postal patrons that included their fact sheet on the impact of the passage of Initiative 695 (I-695). Prior to distribution, Jan Hubbard of the City of Burien faxed a draft version to the Public Disclosure Commission on August 11, 1999 for review. **(Exhibit 11)** On August 17, 1999, PDC staff discussed the need to limit the fact sheet to how the City of Burien would be impacted by the initiative and to remove the information detailing impacts to the state and county services.

7. Respondent's comments: On January 14, 2002, Gary Long, City Manager was interviewed under oath by Public Disclosure staff via telephone. **(Exhibit 6)** Mr. Long described why the retroactive approach to describe revenue losses since 1997 was chosen, by stating, **“to look at a five year period and to look at the past gave us some real facts. To look to the future, it would have been conjecture.”** Mr. Long stated that total revenue loss was calculated based on the **“financial director’s review of the initiative and what we had received in revenue over that period of time versus what the 1% cap would have done to those revenues.”** Mr. Long stated the programs and services identified on the fact sheet that could have been cut if I-747 had been passed in 1997 were provided **“as examples of the types of cuts that could be made to make up for those revenue losses.”**
8. Previous enforcement actions: None

RESPECTFULLY SUBMITTED the 11th day of February, 2002.

Suemary Trobaugh
Sr. Political Finance Specialist

EXHIBITS LIST¹

- Exhibit 2** Letters of response filed on December 11, 2001 and December 19, 2001 Lisa Marshall attorney for the City of Burien..
- Exhibit 6** Interview transcripts with Gary Long, City Manager for the City of Burien on January 14, 2002 via teleconference.
- Exhibit 7** Interview transcripts with Jan Hubbard, Director of Community Relations and Human Resources for the City of Burien on January 15, 2002 via teleconference.
- Exhibit 8** Interview transcripts with Linda Gorton, Director of Finance for the City of Burien on January 17, 2002 via teleconference.
- Exhibit 9** Interview transcripts with Susan Wineke, Consultant for the City of Burien on January 29, 2002 via teleconference.

¹ Exhibits are attached to the Report of Investigation.

Exhibit 11 In 1999, the City of Burien produced and distributed a newsletter to all postal patrons that included their fact sheet on Initiative 695 (I-695).